2022 WL 22247745 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Kings County

Linda COOPER, Plaintiff,
v.
GLATT MART, INC., and Rehman Amjad, Defendants.

No. 505491/2018.
September 30, 2022.

Testimony of Plaintiff's Expert Witness, Andrew Merola - Direct Examination

Name of Expert: Andrew A. **Merola**, M.D.
Area of Expertise: Medical & Surgical >> Orthopedics
Area of Expertise: Medical & Surgical >> Surgery -- General
Representing: Plaintiff
Jurisdiction: Kings County, New York

For the Plaintiff: Koenigsberg & Associates 1213 Avenue U, Brooklyn, New York 11229, By: Robert Rosenberg, Esq., Kevin Cowie, Esq.

For the Defendants: Baxter & Smith Inc 305 Broadway, New York, New York 10007, By: Margot Ludlam, Esq.

Before: Honorable Bernard J. Graham.

THE COURT: All rise.

Please remain standing until everyone gets in. Thank you.

Please be seated.

Mr. Rosenberg, are you ready to call your witness?

MR. ROSENBERG: I am, Judge.

THE COURT: And who would that be?

MR. ROSENBERG: Plaintiff calls Dr. Merola.

THE COURT: Doctor, when you come to the witness stand, if can you remain standing. We'll swear you in.

THE COURT CLERK: Please raise your right hand.

Do you solemnly swear or affirm that the testimony you'll give in this case shall be the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes, I do.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT CLERK: Please have a seat.

Please speak into the mic.

State your name and business address.

THE WITNESS: Andrew Merola. 567 First Street, Brooklyn, New York 11215.

THE COURT: Good morning, Doctor.

THE WITNESS: Good morning.

THE COURT: I'm going to ask that you keep your voice up and take advantage of the microphone.

If you don't understand the question, just say you don't understand the question and they'll repeat it or rephrase it.

If there's an objection to the question, please let me respond to the objection before you answer, if you can.

THE WITNESS: Will do.

THE COURT: Okay.

Whenever your ready.

MR. ROSENBERG: Thank you.

DIRECT EXAMINATION BY

MR. ROSENBERG:

Q Good morning, Dr. Merola.

A Good morning.

Q I'm calling you Doctor, so let me ask you, are you a licensed physician in the State of New York?

A Yes, I am.

Q How long have you been so licensed?

A Since 1992.

Q And can you just give the jury a brief background on your educational background?

A Sure. I went to NYU undergraduate. I then went to Howard University of Medical School. I did a surgical internship at Kings County Hospital Downstate. I then did four years of orthopedic surgical residency also at Kings County Downstate, and then I did one a year fellowship at the University of Colorado in spinal reconstructive surgery.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And, Doctor, how long -- you know what, let me withdraw that.

Your practice now, is it a specialty?

A Yes.

Q Tell the jury what the specialty is.

A So I deal in neck problems in children and adults, so I'm a spinal reconstructive surgeon, which essentially focuses on the neck and back, and I deal with patients who are both newborns up to adults.

Q Are you board certified?

A Yes, I am.

Q Can you just briefly tell the jury what it means to be board certified?

A So that's a process, it's an academic process. It starts after you complete your training where you take two examinations. One is a written exam. The other is an oral examination. You pass both of those examinations, you become board certified, and then every ten years you continue to take examinations and maintain knowledge in your field, and you're examined on a yearly basis thereafter.

Q Doctor, do you have operative privileges in hospitals?

A Yes, I do.

Q Tell the jury what and where?

A At New York Presbyterian, as well as Mount Sinai.

Q Doctor, do you know the name -- do you know this person, Dr. Kuflik or Kuflik?

A Yes.

Q And where do you know him from?

A He's a spine surgeon. He's here in New York City. He's also at Mount Sinai Hospital.

Q Your paths have crossed?

A Yes.

Q And I don't know if you knew this, the defendants retained Dr. Kuflik on this case. I don't know if you knew that or not. Did you know that?

A No.

Q Doctor, by the way, approximately how many spine surgeries do you do in either a month or a year, any way you can quantify it?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A So a typical year, myself and my associates, we do 200 or so surgeries a year.

Q I'm sorry. I didn't hear.

A 200.

Q And how long have you been doing about 200 surgeries to the spine a year?

A Since 1996.

Q So, if my math were right, in the thousands?

A Sure.

Q And, Doctor, you came in to testify because the office called you to come in, correct?

A Yes.

Q And, Doctor, do you ever come in as an expert to court to testify?

A Yes, I have.

Q And who do you come in for?

A Typically patients that I've taken care of.

Q And by being here, you're not happy?

A I'm not unhappy.

Q So by being here, are you not being in your office working? You took time off, correct?

A Yes.

Q And for your time away from the office, are you being paid?

A Yes.

Q And how much are you being paid by the plaintiff?

A So we'll essentially charge $650 per hour for time away from the office.

Q What time did you leave this morning?

A I left at ten.

Q And the sooner we get you out, the less money, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Pretty much.

Q Doctor, you and I, have we ever met before?

A Yes.

Q And when was the last time that we met?

A Probably several years ago.

Q If I told you somewhere in the neighborhood of probably five to ten years ago?

A Yeah. Everything turns into one long year as you get older, so I wouldn't be surprised.

Q How many times have you come in for one of your patients where I was the plaintiff's attorney?

A Perhaps several occasions.

Q Two, three?

A Sure.

Q And that's over the course of -- you said 1996?

A Yeah. So about 28 years or so.

MR. ROSENBERG: Judge, I move to have him qualified as an expert.

THE COURT: Is there any objection to qualify the doctor as an expert in surgery?

MS. LUDLAM: No, Judge.

THE COURT: The Court will deem Dr. Merola to be an expert in the field of surgery.

MR. ROSENBERG: Judge, before we go on, are they witnesses in this case?

THE COURT: They are interns from another judge. I don't expect them to testify.

MR. ROSENBERG: Thank you.

You never know if they're a witness. That's why I asked.

Q So, Doctor, did you bring a file with you?

A Yes, I did.

Q And do you recognize this woman over here?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Ms. Cooper?

A Yes.

Q So, Doctor, when did you first meet Ms. Cooper, for the very first time?

A I first met her back in 2012.

Q And in 2012, maybe if you can, just briefly tell us what happened that caused you two to meet?

A Sure. She had come in for a surgical consultation regarding her neck and back, and I first saw her in February of 2012. She had had an accident, for which I had taken care of her.

Q And as a result of that accident, Doctor, did you ultimately perform surgery to Ms. Cooper from the 2011 accident?

A I did.

Q And when was that surgery?

A That surgery was done on March 15th of 2012.

Q Did you also do a surgery to her lower back?

A I did.

Q And that was also sometime in 2012?

A Yes.

Q Doctor, before June 16, 2017, how many times -- approximately how many times did you see Ms. Cooper?

A About a dozen times or so.

Q When was the last time that you saw Ms. Cooper before June 16, 2017?

A Looks like I saw her in April of 2016.

Q Okay. And let me just jump around a little bit, if I can. What type of -- by the way, the neck -- what is that medically called? What part of the spine is the neck?

A So the neck is referred to as the cervical spine.

Q Okay. And your surgery that you did in 2012, in March 15th of 2012, to Ms. Cooper's cervical spine, can you briefly give the jury an idea of what that entailed? What was it that you did?

A There were two discs in the neck that were removed, and then the neck was rebuilt or reconstructed to fuse the bones together, and that was a procedure done at C4-C5 and C6. There are seven bones in your neck, so the fourth, fifth, and sixth bones were reconstructed to remove pressure from her nerves.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

MR. ROSENBERG: Judge, if I may. Could I approach?

THE COURT: Yes.

Q If you could use this, maybe you could show to the jury. It may help them.

A Sure.

THE COURT: Can you ask the judge -- can you ask the doctor if that is anatomically correct?

Q Is it anatomically correct?

A Yes.

THE COURT: You may proceed.

A Sure. So your neck is a portion of your spine that supports your head above your shoulders and it's made up of seven individual bones that are held together by cartilage discs. They essentially glue those bones together. Your spine contains your spinal cord and it passes through something called the spinal canal, which is an opening in the back portion of the area where your bones are, and that spinal cord is responsible for sending nerves into your arms and your hands.

The nerves on this model are the yellow, the little yellow things that are sticking out of the model that look like wires, and so, those nerves pass out of your spine and then into your arms and your hands.

Q And that surgery that you did in 2012, what is it that you did to her spine? Is there something put in?

A Sure. So in removing the discs that sit in between the bones, the discs are replaced by a special type of carbon fiber device that puts the bones back into a normal position, holds them, prevents them from collapsing, removing the discs that are touching nerves, takes pressure off the nerves and prevents those nerves from becoming anymore damaged. And the entire thing is held together with a metallic clip so the bones essentially grow into one piece of solid bone to stabilize that area of the neck that we've operated on.

Q And in the last visit, if we can jump back now to that, can you tell us, the last visit being before the June 17th accident, I think you said it was April of 2016?

A Yes.

Q So can you tell the jury, generally speaking, what your diagnosis and prognosis was at that point?

A Sure. So, diagnosis wise it's a patient that had undergone spinal reconstructive surgery. She had some, what we call, residual C5 nerve root and C6 nerve root sensory loss, which was consistent with her injuries.

When you're operating on a patient that has a neurological problem, nerves, once they're damaged, don't really recover or have an opportunity to heal, so the reason you're doing the surgery is to stabilize the condition, to prevent it from getting worse.

So she had some residual nerve loss involving what we call the fifth nerves and sixth nerves of the spine, which are the areas that we operate on.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Can you tell the jury, when you do -- when you did this particular operation for Ms. Cooper in 2012, to her cervical spine, did you advise Ms. Cooper whether or not she would need future surgery to that area?

A Sure. So, you know, when you're doing the mechanical reconstruction of the neck and the back, as with most things that are mechanical, there is a tendency for things to wear out over time. The ability for things to work is typically based on wear and tear. So the higher demand, the shorter period of time that the wear and tear happens. The lower the demand, the longer that the wear and tear is required to have that work done.

Q Just so we're clear, Doctor, demand, what does that mean?

A Normal activities that you would do at home and any stress or strain that you would put on the neck or back. So, in general, things that involve bending, lifting, twisting, things like that.

Q Doctor, with someone that is more active, that had had that 2012 operation to the cervical spine, be more susceptible to having a future surgery than someone that is more sedate?

MS. LUDLAM: Objection.

THE COURT: What's your objection?

MS. LUDLAM: Leading and foundation.

MR. ROSENBERG: I could rephrase it, Judge.

THE COURT: Yeah, why don't you rephrase it.

Q Doctor, when you said -- you used the word demand. Can you explain to the jury, people that -- I don't want to call someone a couch potato, but someone that is generally older and more sedate, versus someone that is more active or doing physical work after having such an operation, can you compare those two and what the prognosis would be for a future surgery?

A Yeah, sure. It's basically activity related, right. So if you have someone who's highly active, doing many things, engaged in lot of strenuous activity, that's high demand.

If you have someone, what we call a household ambulator, which is essentially someone that stays home, has very low tolerance, in a sedentary capacity, that's low demand.

So when things are wear and tear related, obviously the higher demand you are, the more wear and tear there is, the more rapid you will have breakdown of areas.

The less demand and the more sedentary you are, the longer things are drawn out before wearing things down or things like operations are necessary.

Q When you last saw Ms. Cooper in June -- not June. When was the last time, was it April?

A April 2016.

Q April 2016. Can you tell the jury generally what your diagnosis was?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A So. She had had reconstructions of her neck and back regions. She was neurologically stable. She was suffering from some chronic residual, as I described, and she was basically at that point in time surgically stable.

Q Did you make a recommendation at that time whether she needed household help, and if so, what that was?

A So, at that time, she did require assistance on a part-time basis. I believe I had suggested somewhere in the neighborhood of what I wrote down in April was four to five days a week, about eight to ten hours per day, depending upon her needs, but I believed that that would be reasonable for her.

Q And, Doctor, after the June 16, 2017 accident, did you then see Ms. Cooper again?

A I did.

Q And can you tell us when you next saw her?

A I saw her in February 2018.

Q 2000 --

A 18.

Q And at that time did she make complaints to you when she came to see you?

A She did. She had rather severe pain in her neck, which she indicated was travelling into her arms and her hands, and moving her head and neck around was making it worse.

Q And did you make any recommendations -- you know what, before we get to that.

Did you conduct a physical exam at that time?

A I did.

Q Tell the jury what the physical exam that you did was?

A Sure.

Q Or consisted of?

A I looked at her and measured her range of motion, and I tested her neurological status to essentially get an idea of what was happening with her neck, and I could kind of compare it to the previous exam. She had rather severe restrictive surgical extension.

The last time I had seen her in 2016, she had cervical extension of about 30 degrees. And when I saw her in 2018, her extension was limited to seven degrees so that was quite significant.

Her flexion was at 20 degrees and her bending was also at 20.

Her rotation was at 30 and 25 degrees so she had some pretty considerable restrictions in her range of motion with palpable spasm in her neck.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Neurologically, one of the things that was most concerning was that she had several, what we consider, pathological reflexes, which are abnormal responses of the arms and hands that are consistent with a spinal cord injury that she hadn't had when I had previously seen her.

The two things that were most concerning were, one thing called dysdiadochokinesia, which is basically a fancy way of saying difficulty with the way you are able to coordinate and control your hands and your fingers, which is a spinal cord function typically related to lower spinal cord function with the nerves that travel into your hands and fingers.

And she also had something called inverted flexor responses, which are abnormal pathological reflexes involving the flexor portions of your arms and your hands. Those reflexes are seen in patients that have a spinal cord issue, which is also technically known as a myelopathy. This was, I would say, profoundly different from the examination that she had previously when I saw her in 2016.

Q Okay. And do you have an opinion, Doctor, what would be the cause of what that difference now that you observed in 2018?

MS. LUDLAM: Objection. Foundation, Judge.

THE COURT: Overruled.

You can give your opinion, Doctor.

A Sure. Looking at those profoundly abnormal reflexes with an examination it was really kind of a night and day examination from her previous exam, and given a history of trauma, with an MRI that I had happened to take a look at that showed what we call a subadjacent herniation below the level of a previous fusion, I would say that that was caused to an incident or an accident, in this case, a car accident as she had described to me.

Q Doctor, do you have an opinion, for someone like Ms. Cooper, that was disabled before the 2017 accident, do you have an opinion whether or not someone like Ms. Cooper is more susceptible to sustaining injury to her spine if she's involved in a rear-end accident subsequent to those surgeries?

MS. LUDLAM: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q Can you explain to the jury what that susceptibility is?

A Sure. So any kind of trauma that your body sustains is based on an amount of essentially energy that's transferred to your body. So if you fall on the ground, you've transferred a certain amount of energy to your body and your body has to resist the amount of that rapid energy transfer.

If you have a patient that has a more fragile constitution or the way that their body is put together, they have to be, by the nature of how they're put together, more susceptible to injury because their body has less ability to resist that abrupt energy transfer.

Q And as a matter of fact, Doctor, did you give instructions, not only to Ms. Cooper, but to your patients in general, do you give instructions after they have a cervical fusion to the neck, such as what Ms. Cooper had before the 2017 accident, do you give them instructions as to what to avoid?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Sure.

Q Go ahead. Tell the jury about that.

A So, typically patients that have had reconstructions, whether it be neck or back, and in this case, with respect to the neck, those patients are essentially told that, you know, their neck is now a mechanical construct that they need to be aware of and they need to be able to modulate their activities to decrease pain.

So, typically, pain is some way your body lets you know what you shouldn't do.

So number one, listen to your body.

Number two, try to avoid significant amounts of repetitive motion.

And number three, try to put yourself into conditions or situations where you would be subjected to excessive strain or force on your neck.

For example, you know, you wouldn't want to be doing, you know, heavy labor or heavy construction or being in some kind of situation where you're at severe or significant risk for injury. And you want to essentially be able to monitor your condition and modulate your activities to care for that newly reconstructed neck that you have.

Q Okay. In 2018, after you first saw Ms. Cooper, did you see her again?

A I did, yes.

Q When's the next time you saw her?

A I had actually, at that point in time, because of the pathological reflexes that she had with evidence of spinal cord compression and spinal cord injury, those are typically things that get progressively severely worse quite rapidly, so to prevent that condition from happening, I recommended that I address that subadjacent level, remove the disc and then extend the fusion to involve C6-C7. I made that recommendation and then we essentially made arrangements for surgery, which was the next time I had seen her.

Q So, Doctor, if -- do you have an opinion, if someone like Ms. Cooper did not have that surgery in 2018, with a reasonable degree of medical certainty, what would be the result of not having the surgery?

A So two things: She would have physically decreasing ability to use her hands and her fingers. Right. So she wouldn't be able to use her hands and her fingers to do normal activities. And then ultimately, the spinal cord is also responsible for the way you walk. She would also start to lose her ability to walk. So those kinds of neurological deterioration are the precise reason for doing surgical procedure.

Q When you saw her for the next time, you operated on her?

A Yes.

Q Doctor, I think you mentioned earlier that you personally examined MRIs?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Can you tell the jury the difference between looking at actual film, not the reports, but the film itself. Have you done that before in your practice?

A Sure.

Q Would it be good practice, Doctor, as an orthopedic surgeon to look at the MRI films before you do an operation?

A Yes.

Q Would you necessarily rely on someone that wrote those reports?

A No.

Q Why?

A Well, the person that's writing the reports doesn't have an opportunity to examine the patient or speak with the patient so they can't really, what we call, clinically correlate what they're seeing on the film with the patient.

And then the other reason is, as a surgeon, you know, we are actually looking at things on the inside, so we want to be able to correlate what we're seeing on the inside with what's on the film. So these are the two main reasons that we have to look at films on all of our surgical patients.

Q And, Doctor, who is in the best position to opine about someone's spinal cord and spine, would it be the operative surgeon? Would it be a consulting surgeon? Would it be equal, or something else?

A So, I mean, in terms of being able to render an opinion about a patient's clinical condition, the person who has an opportunity to see and follow that patient and actually lay hands upon them multiple times, and then having had the opportunity to look upon the inside to see exactly what's going on would be the person who's in the best position to be able to give an opinion about what's actually happening to the patient.

Q And, Doctor, can you tell the jury what type of surgery did you do on March 15, 2018?

A So I did what's called an anterior, that means through the front, cervical, involving the cervical spine, discectomy or removal of disc material with spinal fusion at C6 and C7, which is the level below the previous surgery.

Q And hardware, was something put into her neck --

A Yeah.

Q And if so, what was it?

A So there's a special type of an implant that's called -- it's a biomechanical device connected to a titanium plate that contains two screws in order to hold it into the bones and to maintain the bones in a normal position so that they can protect the spinal cord and nerves and prevent any further damage.

Q And, Doctor, did you have a diagnosis of what the cause of that was?

A Sure.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Tell the jury. What was that?

A So my operative findings showed that she had what's known as a ruptured annulus with a herniated disc.

The annulus is the portion of the disc that maintains the outer covering of the disc, that maintains the jelly-like core in place, and that annulus had ruptured, so it had basically fallen apart with disc material sticking into her spinal cord.

And based on what I was able to see and given her history of having had the motor vehicular accident with her physical findings that showed spinal cord injury, my opinion was that it was related to the accident.

Q Doctor, what you observed inside Ms. Cooper's cervical spine, was there any degeneration that you saw from the 2018 operation?

A Yeah. I mean, she has to have had some degeneration happen. Typically degeneration occurs in a boney fashion. So what happens is the bones and the joints respond to the degenerative process by becoming a little bit larger and then eventually calcifying over. So there's a little bit of that that happens normal with the aging process and there's some of that that happens also with the consequence of having an adjacent segment next to a spinal fusion.

The difference here being that the major pathological or problematic thing that was seen was a rupture of the annulus, so that's a soft tissue rupture of the annulus with a herniated disc, right, so that's the major condition that was found surgically, which is not related to a run of the mill degenerative process.

Q Okay. That's trauma related?

A Correct.

Q And, Doctor, with a reasonable degree of medical certainty, given the history that was given to you, given the records you reviewed and given your operation where you had visualization of Ms. Cooper's spine, was this related to her June 16, 2017 accident with a reasonable degree of medical certainty? And if so, tell them how?

A No. I don't believe so. I think that her pathological reflexes and her spinal cord injury with the rupture of the annulus and herniation that she had was related to the June 16th of 2017 accident.

Q And, Doctor, someone such as Ms. Cooper, that had that rupture, that traumatic rupture of the disc, can you tell the jury, does that cause pain?

A Sure.

Q And what do you base that opinion on?

A I mean, I base that opinion on all the years that I've been in practice, examining and treating patients, understanding and knowing that the discs are intimately involved with the nerves and pain being the normal response that your body has when there's a problem with the internal portion of your body.

Q Doctor, do you have an opinion with a reasonable degree of medical certainty that -- whether or not Ms. Cooper as a result of the June 16, 2017 accident, did she sustain a medically-determined injury that would prevent her from doing her usual customary activities for 90 out of 180 days following the June 16, 2017 accident, and if so, what is that opinion?

MS. LUDLAM: Objection, Judge.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT: What's your objection?

MS. LUDLAM: Again, foundation and questions of law.

THE COURT: Mr. Rosenberg, can you ask the doctor what basis or can he make that determination based on a certain foundation?

MR. ROSENBERG: Sure.

Q Can you make that determination, and if so, what do you base it on?

A I would say that I would be able to base that determination on her physical findings with respect to the spinal cord injury that she suffered.

THE COURT: Okay. It will satisfy. Objection's overruled.

Q Doctor, going back to the 90 out of 180 days following this accident, can you explain to the jury or tell the jury what would have happened to her during that 90 out of 180 days immediately following the June accident and what effect that would have versus the day before that accident?

A Yeah. So, basically spinal cord injury patients lose any ability to use their hands and fingers is a significant issue and, in this case, that's exactly what she manifested, so a deterioration in her overall neurological function subsequent to the accident.

Q And, Doctor, after this surgery, did you see her again, and if so, when was the next time?

A Yes. I saw her for her standard post-op visit in April of 2018 after the surgery was done.

Q What were the complaints and did -- did she have complaints and did you do a physical at that time?

A So that's her first postoperative visit, and that visit is geared towards making sure there are no complications from the surgery. She didn't have any new complaints or symptoms and her physical exam showed that she was recovering from surgery.

Q Did you see her again, and if so, when?

A I then saw her in March of 2019.

Q And did she have complaints of pain at that time?

A So at that time, let's see. Most of her symptoms were just stiffness in her neck and back. The neck stiffness was the majority of her symptoms and she was following up with Dr. Koyen for physiatry.

Q That would be physical therapy?

A Yes.

Q Did you see her again?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q When's the next time?

A I then saw her in December of 2019.

Q And at that time did she have complaints of pain and did you do a physical?

A Once again, at that point in time, majority of her symptoms were mostly related to the neck. Physical examination showed that she was neurologically stable with some residual, what we call disdiadochokinesia, those pathological reflexes and some residual inverted flexor responses but no neurological deficits.

Q Disdiadocho? (Sic)

A Kinesia.

Q Kinesia?

A Yeah.

Q Is what she did not have the day before this accident, correct?

A Correct.

Q Did you see her again?

A I did.

Q When's the next time?

A I saw her in September of this year.

Q And did she have complaints of pain at that time, and did you do an exam?

A Her neck pain was pretty consistent with her previous visits and her examination showed that she had residual, residual dysdiadochokinesia, difficulty utilizing hands and fingers, and remained essentially neurologically stable.

So that is to say that the neurological condition that she had when she originally presented to me was residual but stabilized with the surgery.

Q Not getting worse?

A Correct.

Q Okay. That was the last time you saw her, correct?

A Yes.

Q Doctor, do you have a prognosis with a reasonable degree of medical certainty for Ms. Cooper?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Sure.

Q What is that?

A So the prognosis, you know, there could be prognoses that are good, which means everything's going to be pretty much okay. The middle of the road prognosis is what's called guarded, which means patients need to have continued followup and you need to keep an eye on them, and then there are poor prognoses.

In this case, I would say that her prognosis is guarded, which means that, you know, she continues to require some followup, we need to keep an eye on her and she continues to require treatment because of her residual nerve damage involving her spinal cord.

Q And with a reasonable degree of medical certainty, given that Ms. Cooper is 71 years old, do you have a prognosis one way or another whether or not Ms. Cooper is going to need another neck surgery?

A Well, you know, given the fact that she's low demand and even lower demand at this point in time, it's more than likely not that she will not require another surgery.

Q Okay. And, Doctor, with a reasonable degree of medical certainty, do you have an opinion whether or not as a result of this accident of June 16, 2017, did Ms. Cooper sustain a permanent consequential injury to her spinal cord?

A Yes.

MS. LUDLAM: Objection, Judge. That's a question of law -- that question is a question of law.

THE COURT: That's a fundamental question for serious injury.

I understand your objection. But I'm overruling it, the doctor is able to give a conclusive opinion.

Q You can answer.

A Yes. The answer is yes.

Q What do you base that opinion on?

A Her clinical condition, her physical findings, the operative findings.

Q Doctor, as a result of her June 16, 2017 accident, do you have an opinion with a reasonable degree of medical certainty whether or not Ms. Cooper sustained a significant limitation to her spine as a result of that accident, and if so, what do you base that opinion on?

MS. LUDLAM: Again, note my objection, Judge.

THE COURT: So noted. Same ruling.

A Yes, I do. That opinion is based on her clinical condition, as I've examined her and her operative findings and she has sustained a significant limitation in her neurological function.

Q And, Doctor, do you have an opinion whether or not Ms. Cooper requires home care or nursing home care as a result of this June 16, 2017 accident?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q Or cumulatively, that being because of her condition before the June 16th accident, and if so, what's that opinion?

A Yes. She falls into the category of a patient that has a significant neurological problem that would require extensive home care and/or inpatient tertiary care.

Q Doctor, based on this last visit with Ms. Cooper this month, do you have an opinion of what type of care Ms. Cooper presently needs compared to before this accident?

A So, you know, because she has a myelopathy and difficulty utilizing her hands and fingers, she would certainly require someone who can, you know, assist her with activities that require use of arms and hands, like meal preps, doing the dishes, preparing meals, laundry. Those kind of things. Because those are pretty much upper extremity hand and finger kinds of things.

Q Doctor, I believe you said earlier in your testimony that in some time in 2016, you recommended Ms. Cooper have either an aide on a part-time basis is what I think you said, does that level of care -- has that level of care now changed in your opinion for Ms. Cooper based on your visit in September of this year, of 2022, and if so, what is that?

A Sure. You know, back in 2016, as I say, she didn't have that significant amount of difficulty utilizing her hands and her upper extremities and now she does, so her level of care would change to be much more intensive now than it had been previously.

Q Full time, still -- full time or part time?

A Well, part time previously and now it would be recommended for her to have more of a full-time person who can help her with those activities at home.

MR. ROSENBERG: Judge, I don't have anymore questions.

THE COURT: Okay.

MS. LUDLAM: Judge, can we approach?

THE COURT: Should we take a break?

MS. LUDLAM: Just a five-minute break, Judge.

THE COURT: We're going to take a quick break for the jury to stretch their legs.

All rise.

THE COURT OFFICER: All rise.

(Jury exits.)

(Short break in the proceedings.)

THE COURT: All rise.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT OFFICER: All rise. Jury entering.

THE COURT: Please be seated.

Are you ready for your cross-examination?

MS. LUDLAM: Yes, Judge. May I inquire?

THE COURT: You may.

MS. LUDLAM: Thank you. CROSS-EXAMINATION BY

MS. LUDLAM:

Q Good afternoon, Doctor.

A Hello. How are you?

Q Doctor, you mentioned before on direct examination that you testified in court before; is that correct?

A Yes.

Q In fact, you did testify and I believe you said since the late 90s?

A Sure.

Q And that's on behalf of your patients?

A Yes.

Q And in the last let's say couple of years, have you testified, we'll call during the pandemic period, from March 2020 till the present, have you testified at all in court, in some of those testimonies made in court virtually, did you do that?

A Yes.

Q How many times did you testify virtually?

A Actually I came to court. I think I was in court last year, so about one or two. I didn't do any virtual testimonies.

Q And prior to the pandemic, let's talk about a couple of years before the pandemic, 2018, 2019, did you testify in court?

A Sure.

Q Approximately how many times?

A So usually it happens about four or five times a year.

Q And, Doctor, you mentioned before on direct examination that because you're out of the office, you're out of the office when you have to come to court, for your appearances, you do charge a fee, you said it's about $650 an hour, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q In addition to your time in court, you've also -- you've also reviewed your records?

A Yes.

Q Concerning Mrs. Cooper?

A Yes.

Q And in addition to your time in court, you've also met with Mrs. Cooper's counsel to prepare for the testimony?

A We actually just met here this morning.

Q Can you tell us, as you sit here now, how much you will be charging for your appearance both in terms of your actual time on the stand and in your preparation for your testimony?

A Probably took me about, I mean, a half an hour to meet with counsel and review records, so I honestly didn't really have an opportunity to meet with him too much. I met with him about five minutes this morning right before Court and then I guess it depends on what time I'm able to go home today.

MR. ROSENBERG: So be fast.

Q So be fast is what I'm getting. Doctor, you have to pardon me, I don't have a table right here. Do you recall testifying back in, as early as 2002 in court?

A That was about 20 years ago.

Q So you may not recall the --

A Sure.

Q -- circumstances.

A Yes.

Q Do you recall testifying for your patient Dennis Cioffi, C-I-O-F-F-I, in New York County Supreme Court, 2002?

A Yeah, I remember Dennis, but I don't remember the testimony per se, no.

Q Okay. And do you recall back in 2004, again, in New York County, testifying in Supreme Court, for your patient, who was a plaintiff, May Lin Devriglio, D-E-V-R-I-G-L-I-O.

Do you recall her?

A Yes, I do.

Q As a patient?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And do you recall testifying on her behalf in her lawsuit in 2004 in New York County?

A Not the specifics, no.

Q Doctor, do you recall testifying for your client -- I'm sorry, your patient Blake Kirby, who was a plaintiff in a personal injury lawsuit in 2004, again in New York County?

A Sure. Blake is a patient, but I don't really have any recollection of the testimonies, no.

Q Do you recall actually appearing in court for Mr. Kirby back in 2004, in New York County?

A Not specifically, no.

Q Do you recall testifying in 2009, in Kings County, where we are right now, for your patient, either Joseph or Jean Karash, K-A-R-A-S-H? They both brought the lawsuit together.

A I believe Joseph is the patient.

Q Do you recall appearing in court in Kings County, here, again in this building, in 2009, to testify, on behalf of your patient, for his personal injury lawsuit?

A I don't recall the appearance, no.

Q And do you recall testifying more recently in this court and maybe even in this courtroom in March -- on March 20, 2015, on behalf of your patient, Karabaza, K-A-R-A-B-A-Z-A, either Natalia or Egbart?

A Natalia is my patient.

Q And that's, in fact, before his honor that's presiding over this case?

A Yes.

Q Do you recall appearing in court to testify on behalf of your patient?

A Yes, I recall -- yes, I do.

Q And, Doctor, do you recall testifying in Queens County back in November, probably November 16, 2018, on behalf of your patient Patricio Ticksy (phonetic)?

A Yeah, Patricio is a patient. I don't recall the testimony.

Q So would it be fair to recall that I was one of the defense counsel in that lawsuit?

A I don't, no. But it's nice to see you again.

Q Now, Doctor, you have your model, that's the cervical spine that's in front of you, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And as the Judge inquired, asked counsel to ask you, that's anatomically correct, correct?

A Yes.

Q And that's just of the cervical spine, it doesn't go into the thoracic or lumbar spine?

A Yes.

Q So we're just looking at what we would call the neck; is that fair?

A Yes.

Q Now, Doctor, and I'm just going to ask you general questions and we'll get in to Ms. Cooper's treatment. Would it be fair to say when you performed fusion, we'll refer to the cervical spine area, which is the neck, when you perform a fusion of certain levels, that that changes the mechanics of the neck, correct?

A Yes.

Q And you had testified previously on direct examination that when you first treated Mrs. Cooper and this is back in 2012, you performed a cervical procedure on her neck at levels C4-C5 and C6, correct?

A Yes.

Q And you discussed very briefly what those procedures were, but one of them was actually a fusion, correct, of those three levels?

A Yes.

Q And would it be fair to say, Doctor, that as a result of the fusion surgery that you performed in 2012, at levels C4-C5, C6, that what's called adjacent segment issues develop on the discs above and below those levels that you've fused, correct?

A Yes.

Q And would it be fair to say, Doctor, that discs essentially would act as shocking absorbers for the spine; is that fair?

A Yes.

Q And, so, as a result of the fusion, a disc is removed and that changes the load on the cervical spine, correct?

A Yes.

Q And as a result of the change of that load on the cervical spine, there could be damage or breakdown of the adjacent discs above or below where the fusion occurred?

MR. ROSENBERG: Just note my objection as to could be.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

THE COURT: Hypothetical I guess, yes?

MS. LUDLAM: Judge, I'll withdraw the question. I'll ask it a different way.

THE COURT: Okay.

Q As a result of the fusions, the fusion that you performed, say at C4-C5, C6, that there will be a breakdown of the discs above that level and below the levels that you performed the fusion on, correct?

A Yes.

Q You also would call this condition, what you would have referred to, in the past, I believe as adding-on phenomenon?

A Yes.

Q What is an adding-on phenomenon?

A It's a mechanical breakdown of the segments, adjacent areas that have been fused.

Q And that's because of the fusion surgery that's performed, correct?

A Yes.

Q And as a result of this adding-on phenomenon, which this causes more wear and tear on the disc levels, fair?

A Yes.

Q And this, as a result, will accelerate the degeneration that occurs in the neck, the normal wear and tear is now accelerated as a result of the fusion surgery performed, correct?

A Yes.

Q And then this will then lead to the breakdown of the adjacent segments above and below the areas that you've previously fused, correct?

A Yes.

Q And as a result of the breakdown on the levels above and below the areas that you have fused, that this will -- that this could potentially require a future surgery at the levels that have now suffered the breakdown, correct?

A Yes.

Q Now, Doctor, again, I apologize, ‘cause this is my table down here.

You brought some records into court today, correct?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And the records that you brought in today are -- the entirety -- are they the entirety of your records from when you first saw Mrs. Cooper in February of 2012 up until the last visit, which you said was this month of, I believe it's September 12th of 2022, correct?

A Yes.

Q So that's all the records that you have for Mrs. Cooper, correct?

A Yes.

Q And included in the records that you prepare, in other words, for each office visit, you prepare an office, a report of that office visit, correct?

A Yes.

Q And just so we're clear, when you prepare an office visit, is that handwritten note or do you dictate something or do you type something? How do you prepare your report for each office visit?

A I dictate it.

Q And then somebody in the office will transcribe that and then you produce a typewritten report for that visit, correct?

A Yes.

Q In addition to your typewritten reports contained in your file for Mrs. Cooper, you also have reports from other doctors and other facilities concerning Mrs. Cooper's treatment, correct?

A Yes.

Q And some of those reports could be reports from a radiology facility concerning certain films or X-rays that you've ordered, correct?

A Yes.

Q And the reason that you have those records is because you have referred Mrs. Cooper to outside facilities for certain testing so those facilities will then send you their reports?

A Or she's had testing done that was then sent to me, but both of those situations happened.

Q And you also have, in addition to say film reports such as reports from MRIs or X-rays or CT scans, you also have records concerning the physical therapy that you referred her for and you have those records as well, correct?

A Yes.

Q And the reason you keep those reports in your file is because it helps -- you need to see the whole picture in order to determine the type of treatment that you will render for Mrs. Cooper's conditions, correct?

A You don't need to see the whole picture, but having some pertinent medical records is helpful, yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Would it be fair to say that the reports for the MRI films, for instance, that were taken of the neck and back are important for your treatment, your diagnosis and treatment?

A I mean the reports reference me to the film and when it was taken, so they're helpful.

Q When -- in addition to the films -- let's just stick with MRIs for the moment. When you receive the reports for the MRI films, do you also receive the films?

A Yes.

Q And are those films in your file?

A No.

Q And why not?

A They're typically accessed online or they're accessed by CD, so if they're on a CD, what we'll do is we'll download the CD to the hospital server for the surgery so we have it up on the screen while we're doing the surgery or we log into the, you know, main frame for the radiology place and then we just look at it online so we don't use -- unfortunately, we don't use old school film anymore.

Q So, Doctor, when you are preparing one of your office visits and referring to films that were taken, what you put in your report, is that based upon what's in the radiologist's report or what you determine based upon your review of the actual film?

A What I determine is clinically significant based upon the actual film.

Q So you make an independent determination of what the film said, separate and apart of what the radiologist has said in their report?

A Yes.

Q Now, Doctor, I want to go through your records with you, and I see you separated your records in terms of times and treatment. You have the records clipped from the 2017 accident, and then you have a separate clip for the separate section which you clipped for the records concerning the 2011 accident, correct?

A Yes.

Q If you can, Doctor, first go to the 2011 accident related records.

And, Doctor, your first -- the first report you have is concerning the initial evaluation you had with Mrs. Cooper which was on February 24, 2012, correct?

A Yes.

Q And at that time Mrs. Cooper was complaining of neck and low back pain from a car accident of December -- you wrote, I believe, to December 9, 2011, correct?

A I have December 8, 2011, but --

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q I'm sorry, December 8, 2011?

A Yes.

Q And at that time she was complaining of progressive pain in the neck and the upper extremities with pins, needles, numbness, tingling and weakness into the upper extremities and hands, correct?

A Yes.

Q And she was also at the time of this initial visit of February 24, 2012, utilizing a cane to ambulate or walk, correct?

A Yes.

Q And she was making complaints of low back pain, correct?

A Yes.

Q At this initial examination or evaluation of February 24, 2012, you also performed a physical examination, correct?

A Yes.

Q And at that time you noted from the physical examination that Mrs. Cooper had what you called an antalgic and kyphotic gait?

A Yes.

Q An antalgic gait is there's a disturbance in the way that one walks because of pain, right?

A Yes.

Q And a kyphotic gait is more of a hunched over gait, correct?

A Yes.

Q And it's fair to say that throughout your treatment of Mrs. Cooper that she maintained those gaits?

A Yes.

Q And that was through your last visit of April 2016, before this accident, correct?

A Yes.

Q Doctor, on this initial visit of February 24, 2012, you had an opportunity to review MRI films, correct?

A Yes.

Q Did you actually review the films or did you look at the reports?

A The film.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Okay. And these are MRI films that you looked at concerning both the cervical spine and the lumbar spine, correct?

A Yes.

Q And these films, would it be fair to say, were taken around February 1st of 2012?

A Yes.

Q And the -- you wrote in your report for this office visit of February 24, 2012, what you observed on the MRI films, correct?

A Yes.

Q And in addition to finding herniations at C4-C5 and C5-C6, you also found a herniation at the C6-C7 level, correct?

A Yes.

Q And the C6-C7 level is the level that you performed this fusion surgery on following this accident in March of 2018, correct?

A Yes.

Q So back in February of 2012, you noted that Mrs. Cooper had developed a herniation at that level, C6-C7, correct?

A Yes.

Q By the way, Doctor, if we can just talk briefly about what a herniation is, and there's reference to jelly. Would it be fair to say that a disc is essentially like a jelly doughnut?

A Yes.

Q So if there's what we call a bulge, a degenerative condition, that just flattened the doughnut, correct?

A Yes.

Q When there's a herniation, the herniation is that the jelly is actually starting to come out of the doughnut, again, sticking with our analogy that a disc is like a doughnut, the jelly or the inner core, the jelly-like core of the disc is now coming out, correct?

A Yes.

Q And there's no way to get that back -- to get that jelly back in there, correct?

A It depends on how much is coming out and what position, etcetera, yes.

Q And a herniation, would it be fair to say, Doctor, actually causes pain?

A Can, yes.

Q And, Doctor, you also found, again, and I'll move on to the next -- to another visit after this, but you also found in your initial evaluation of February 24, 2012, that Mrs. Cooper had cervical radiculopathy, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And what is radiculopathy?

A Problem with the nerve roots.

Q And that causes conditions with the hands and fingers?

A And, well, this was the C5 and the C6 roots, so this is upper arm and then down into the wrist, yes.

Q So that would cause numbness and tingling, that pins and needles sensation?

A Yes.

Q And pain running down the arms, down to the wrists?

A Yes.

Q Now, Doctor, following that February 24, 2012 visit, your next time you see Mrs. Cooper is when you perform the surgery?

A Yes.

Q To the neck, which is in March of 2012, correct?

A Yes.

Q So you did not have any visit in between the initial evaluation and the hospital and the operative report room, correct?

A Correct.

Q Again, you talked about the procedures you performed, but one of them included an anterior spinal fusion utilizing autogenous and allograft bone at C4-C5 and C5-C6, correct?

A Yes.

Q And then following the March 15, 2012 surgery, you had several immediate followup visits with Mrs. Cooper, correct?

A Yes.

Q And by the way, Doctor, I believe you testified earlier on direct that for the 2011 accident, you said you had about a dozen followup visits, visits with Mrs. Cooper, correct?

A Yes.

Q Would it be fair to say that it was more about 20?

A Let's see. I mean, I did a brief count when asked. So I see one, two, three, four, five, six, seven, eight, nine. Well, I have about 12 -- I have 12 office visits in my record.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q Okay. I counted 19 when I looked through the records. But that included the 19 -- the 19 included a telephonic visit, a telephone visit?

A Yeah. There was some telephone conversations with the patient and some reviews of records and other things that were housekeeping issues.

Q So you don't count that as a visit?

A Yeah, I mean, you're not really examining the patient, so it's not really an office visit.

Q But you still prepare a followup visit report?

A Well, there's a historical record of whatever you have to do, if it was on the telephone or reviewing the record or what have you.

THE COURT: Ms. Ludlam, I don't want to interrupt your flow at all, but at some point, we do break.

MS. LUDLAM: We have to break, right? So you tell me when, Judge.

THE COURT: We can keep going. Just let me know when is a good time to break. Just let me know.

MS. LUDLAM: I don't want to keep the Court and the jury longer than we have. So I'll just briefly touch on one thing and we can break, Judge.

THE COURT: No problem.

Q Doctor, if we can go to the June 29, 2012 followup visit.

Let me know when you're there.

A June 29, 2012?

Q Yes. And on that followup visit, again, this is followup visit relative to the cervical fusion that you had performed three months earlier, correct?

A Yes.

Q And at that time, you noted that unfortunately she is reporting progressive low back pain and bilateral lower extremity pain particularly down the right leg, correct?

A Yeah, which date are we looking at?

Q I'm sorry, June 29th?

A June 29, 2012?

Q Correct.

A Yes, correct, yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And then you had a followup visit, September 28, 2012, where she was complaining of pins, needles, numbness and tingling, correct?

A Yes.

Q And as a result of the low back complaints she was having, you performed surgery on Mrs. Cooper concerning her lumbar spine on October 11, 2012, correct?

A Yes.

Q And that also entailed a fusion at L3-L4 and L4-L5?

A Yes.

Q Followup visit to that surgery is October 26, 2012, correct?

A Yes.

Q And at that time you noted that Mrs. Cooper was utilizing a wheeled walker?

A Yes.

Q And that's similar to what she's currently using, correct?

A Yes.

Q In fact, from that visit of October 2012, to the present, Mrs. Cooper was -- has been utilizing a wheel walker, correct?

A Yes.

Q And you also noted in the visit of October 26, 2012 that Mrs. Cooper is 100 percent disabled from all work and duties, correct?

A Yes.

MS. LUDLAM: All right. Judge. This is probably a good place.

THE COURT: Good place to break?

MS. LUDLAM: Yes.

THE COURT: We'll break here.

As I mentioned, we need to take a break for the lunch hour. We'll be back at 2:00. Please try to be on time. Feel free to go out and about the neighborhood. Give yourself time to come back so we can get started as soon as possible.

2:00.

All rise.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

(Jury exits.)

THE COURT: Doctor, please don't discuss your testimony during the lunch break, if possible.

THE WITNESS: Will do.

(Witness exits.)

(Court is in lunch recess.)

THE COURT: All rise.

THE COURT OFFICER: Please remain standing.

THE COURT: Please be seated.

Good afternoon.

Whenever you're ready, Ms. Ludlam.

MS. LUDLAM: Thank you, Judge.

CONTINUED CROSS-EXAMINATION BY

MS. LUDLAM:

Q Good afternoon, Doctor. Welcome back.

A Good afternoon.

Q I'm going to pick up where we left off in your records. Again, we're referring to the section that you clicked off in the 2011 accident. I'm going to try to streamline this a little bit. I want to focus on 2013 where you continued to treat Mrs. Cooper following both now the neck and back surgeries. I believe you had four visits in 2013, correct?

A Yes.

Q And in all four visits, Mrs. Cooper was complaining of both low back pain and neck pain, correct?

A Yes.

Q She was also treating with Dr. Koyen, K-O-Y-E-N, who's in charge of her physical therapy, correct?

A Yes.

Q And she was also treating with a Dr. Davy, D-A-V-Y, a pain management specialist, correct?

A Yes.

Q You referred Mrs. Cooper to Dr. Davy, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And pain management, that entails both the actual medications and injections, correct?

A Yes.

Q And she was continuing to treat with both Dr. Davy and Dr. Koyen throughout 2013, correct?

A Yes.

Q And throughout 2013, on those four visits, Mrs. Cooper also still had those altered gait, the antalgic gait and the kyphotic gait that we talked about earlier, correct?

A Yes.

Q And during those four visits, you continued to note that Mrs. Cooper was 100 percent disabled from all work and duties, correct?

A Yes.

Q So we've gone through 2013. You then have a followup visit with Mrs. Cooper on February 6, 2014, correct?

A Yes.

Q And in that time, you noted that Mrs. Cooper was experiencing residual numbness and tingling in axial neck pain, correct?

A Yes.

Q And axial just means it's in a certain region, correct?

A Yes.

Q Just relegated to a particular part of the body, correct?

A Yes.

Q And she was also in the wheeled walker, you noted that specifically in the notes, correct?

A Yes.

Q And you also noted that she was still seeing Dr. Koyen?

A Yes.

Q And that she was experiencing symptoms and pain with numbness and tingling to the arms, hands, legs and feet, correct?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And you still noted that she was 100 percent disabled from all work and duties, correct?

A Yes.

Q You also noted in the February 6, 2014 visit, that you had counselled Mrs. Cooper regarding the possibility of recurrent radiculopathy and/or adjacent segment issues, which would otherwise necessitate further surgical intervention, correct?

A Yes.

Q And in your next visit --

MS. LUDLAM: I apologize, Judge. I have to get my glasses.

THE COURT: No problem.

MS. LUDLAM: Sorry about that.

Q Sorry, Doctor.

Your next visit was October 17, 2014, correct?

A Yes.

Q And at that time you noted that Mrs. Cooper had chronic pain with some chronic neurological symptoms which Dr. Davy has indicated that he might or she might be putting a spinal cord stimulator pending the results of the trial, correct?

A Yes.

Q And, Doctor, what is a spinal cord stimulator?

A It's an electronic device that stimulates the spinal cord in order to decrease pain and symptoms.

Q And that's actually a two-step process, correct, there's a trial implant, which is not actually implanted, correct?

A Yes.

Q It's on the outside and it's just to see -- a week-long period to see if this would actually reduce the pain, correct?

A Yes.

Q And assuming the trial worked, then there's a surgical procedure that implants the device, it's a battery-operated device, correct?

A Yes.

Q The device on the spine in so -- it's surgical intervention, correct?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And that's if there's severe pain, correct?

A Yes.

Q And that was being recommended to Mrs. Cooper back in October of 2014, correct?

A Yes.

Q And sticking with the October 17, 2014 visit, in addition to noting the recommendation for the spinal cord stimulator trial, you also noted that there was strict restrictions with activity, including activity modifications and restrictions, including no bending, no lifting and no twisting, correct?

A Yes.

Q The following visit, after October 17, 2014, you have -- your next visit, your next visit with Mrs. Cooper is January 29, 2016, correct?

A Yes.

Q And she's still using the wheeled walker, correct?

A Yes.

Q And she was still complaining of mechanical axial issues with regard to the neck and back, correct?

A Yes.

Q So this is about one and a half years before the accident that is subject to this lawsuit, correct?

A Yes.

Q And you also noted in your report that she was complaining of pain in the neck with radiating symptoms into the upper extremities, which included the arms and hands, correct?

A Yes.

Q And radiating, we talked about before, Doctor, but that's when it travels down from one point to another point, correct?

A Yes.

Q So the pain was radiating from the neck down the arm into the hands, correct?

A Yes.

Q And you also noted, Doctor, on this January 29, 2016, visit that there was an increase in symptoms with regard to an increase in activities, correct?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q So that whenever she was engaged in activities, that would increase her symptoms?

A Yes.

Q And, Doctor, on the January 29, 2016 visit, you also noted that Mrs. Cooper, you observed, that Mrs. Cooper had severe antalgic and kyphotic gait, so her gait pattern appeared severe to you?

A Yes.

Q You also noted that there was nerve involvement and neurological deficits to the upper and lower extremities, correct?

A Yes.

Q What do you mean by nerve involvement?

A The C5 nerve root and the C6 nerve root in the arms and hands and the L3 to the S1 roots in the legs.

Q But that is still affecting the arms and hands, correct?

A Yes.

Q And by neurological deficits, is that different than neuroinvolvement, or are you saying that's the same?

A That's the same thing.

Q And, again, on January 29, 2016, you noted in your report that you counselled Linda, Mrs. Cooper, regarding potential for future surgical intervention in the form of revision surgical intervention requiring adjacent segment issues in the future, correct?

A Yes.

Q Doctor, according to your file, you were -- contained in your file, there were X-rays taken on January 29, 2016 of both the cervical spine and the lumbar spine, correct?

A Yes.

Q Right, and those were X-rays that were taken at -- outside of your office, correct?

A Yes.

Q Did you receive just the report or did you receive both the report and the X-rays?

A The X-rays and the reports.

Q And you reviewed -- you looked at the films as well as the reports, correct?

A Yes.

Q And the X-ray for the cervical spine noted that there was degenerative disc disease at C6-C7, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And that's the level that you performed the fusion surgery in March of 2018, following this accident, correct?

A Yes.

Q Doctor, following the next visit that you have -- well, strike that. The next record that you have in your -- in the chronology of your report concerning the treatment of Mrs. Cooper for the 2011 accident is a report dated February 4, 2016, which you've entitled review of medical records, correct?

A Yes.

Q And this is a report, a short report that you prepared concerning your review of the X-rays and the corresponding reports with regard to the X-rays we just discussed conducted on January 29, 2016, correct?

A Yes.

Q And in your report, you wrote that subadjacent C6-C7 vertebral segment breakdown is appreciated, correct?

A Yes.

Q And that's a little less than a year and a half before this accident, correct?

A Yes.

Q Doctor, going to the April 8, 2016 visit, is that the last visit you had before you saw Mrs. Cooper again in 2018?

A Yes.

Q And at this visit of April 8, 2016, you prepared a report, correct?

A Yes.

Q And you noted that she was -- that Mrs. Cooper was having increasing pain and symptoms?

A Yes.

Q You also noted that she had significant mechanical axial symptoms, those symptoms included neck and back symptoms, which prevent her from her ability to bend, twist, lift, push, pull, stoop, crawl, sit and/or stand for long periods of time, correct?

A Yes.

Q Doctor, in your report under the section you've entitled impression and plan, is it correct to say that you noted that given the nature and duration of Linda's complaints and symptoms, including some progressive symptoms over the course of time, it is my opinion that she should be reevaluated under the auspices of Dr. Davy?

A Yes.

Q And that's the pain management specialist, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Yes.

Q And that's because she was experiencing pain, an increase in pain?

A Yes.

Q And this is the visit where you recommend that because of her overall condition and continuing to have difficulties with her activities of daily living, that she would need a personal home care attendant utilized on a basis of eight to ten hours a day, four to five days a week, correct?

A Yes.

Q And you also noted that she would require a part-time skilled nursing assistant for about four hours a week, correct?

A Yes.

Q You also note in this office visit that you had a concern that she would be a fall risk and that she may need a nursing facility, correct?

A Yes.

Q And, again, this is about a year and two months, three months before this accident, correct, of 2017, correct?

A Yes.

Q And you note in your report that the reason that you are making these recommendations for these various types of care for Mrs. Cooper was that she was having progressive difficulties with activities of daily living around the house, including simple things as meal bread, you wrote meal bread, I don't know if you meant meal prep, but you wrote meal bread, putting on shoes and socks, personal care and hygiene and the like, correct?

A Yes.

Q Following this visit of April 8, 2016, Doctor, in your report is a letter that you wrote, which you entitled home health care letter where you make these recommendations in a letter form, correct?

A Yes.

Q Is that more of a to-whom-it-may-concern letter?

A Yes.

Q You make all the recommendations that we talk about in terms of a home health aide, personal care and possible nursing facility, correct?

A Yes.

Q Now, Doctor, I want to now skip over to the records you have clipped concerning the accident of 2017, which is the subject of this lawsuit -- actually, I apologize, Doctor. Before we get to that section of the records, I want to go back to the 2011 records.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Do you have in your file with you today the report you have concerning the telephone conversation you had with Mrs. Cooper on June 25, 2016, which would be almost to the day, one year before the subject accident?

A Let's see. I don't see the telephone conversation.

Q Doctor, do you recall having a conversation with Mrs. Cooper in June of 2016, where you discussed with her that she was at risk for an adjacent segment issue over the course of time --

MR. ROSENBERG: Judge, I'm going to object. Because why doesn't she show him the record. How would he know that. She's reading from a report. I haven't objected at all. She's not supposed to do that.

THE COURT: She's trying to refresh his recollection.

MS. LUDLAM: Sure, Judge. I will. May I use the subpoenaed records?

THE COURT: Sure.

MS. LUDLAM: I'll mark the record as Defendant's Exhibit A for ID.

THE COURT: You can show it to the doctor.

Are we putting those records in evidence?

MS. LUDLAM: Right now they're just for ID as Defendant's Exhibit A, Judge.

Q Doctor, I'm showing you what has been marked for identification as Defendant's Exhibit A. I'd like you to look through them and tell me if you recognize these as your office records concerning Mrs. Cooper?

A Yes.

Q Your initial evaluation until your last visit?

A Yes.

Q And in looking through those records, do you see your office visit notes for 2016?

A Yes.

Q Do you see the office -- strike that.

Do you see the report that you prepared concerning a June 25, 2016 telephone conversation with Mrs. Cooper?

A Yes.

Q And does this, by looking at this report, does this refresh your recollection as to you having a conversation with Mrs. Cooper on June 25, 2016, of about possible future revision surgery?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And is it fair to say that in your report you noted that she is at risk for an adjacent segment issue over the course of time, which would require future revision surgery in the form of a revision -- of a revision procedure?

A Yes.

Q Doctor, you talked about this condition that Mrs. Cooper developed that you noted in 2018 called dysdiadochokinesia?

A Yes.

Q And that's a condition where it affects the movement of muscles, correct?

A Yes.

Q And is it fair to say that this condition comes from a disturbance in the cerebellum, correct?

A No. Not in this case.

Q Okay. And why do you say not in this case?

A This is fine coordinating control of the hands and fingers. So cerebellar conditions refer to a gait abnormality because the cerebellum actually controls gait more than it does upper extremities, arms and hands.

Dysdiadochokinesia is a condition of cervical myelopathy.

Q But you have no way of knowing whether this is a condition that she developed as a result of this accident, as opposed to something else, correct?

A No. I believe I do.

Q Well, you say you believe?

A Yes. To within a reasonable degree of medical certainty based upon my treatment of the patient.

Q Now, following this surgery of March 15, 2018, which you performed on the C6-C7 level. The next visit, you had a followup, one or two followup visits, correct?

A Yes.

Q In your last visit, we'll put your last face-to-face visit before the pandemic was December 16, 2019, correct?

A Yes.

Q And at that point you noted that Mrs. Cooper was stable from the surgical -- from a surgical perspective, correct?

A Yes.

Q And then you have a telehealth visit, April 15, 2020, correct?

A Yes.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

Q And that is the last treatment you had with Mrs. Cooper up until the time you saw her two weeks ago, correct?

A Yes.

Q So you hadn't had any contact, either telephone, video or in person from February 15, 2020, up until September 12, 2022, correct?

A Yes.

Q And at the September 12, 2022 visit, you did not recommend additional future surgery, correct?

A Yes.

Q In other words, that's correct, my statement is correct?

A Yes, correct.

MS. LUDLAM: Okay. Doctor, I thank you very much for your time. Thank you. Thank you, Judge.

THE COURT: Thank you. Would you like to redirect?

MR. ROSENBERG: Yes.

REDIRECT EXAMINATION BY

MR. ROSENBERG:

Q Doctor, just for clarification, can you tell the jury what it is, what do you base your opinion on that this accident of December -- of -- I'm sorry, of June 16, 2016, caused what? Tell them. Explain that to them, and what difference that made versus the day before that accident.

A So she had been suffering from a neck and back condition prior to when the accident occurred. The primary issue for her neck, specifically, since we did revision surgery on her neck, the primary issue was a C5 and a C6 nerve root injury which was essentially stable and chronic, and it produced some neck pain and it produced some neurological deficits to her arms and her hands.

Major difference between what existed before the accident and what existed after the accident was the evidence of a spinal cord injury. The evidence of positive inverted flexor responses, which are associated with arm and hand myelopathy coming from the neck, and dysdiadochokinesia, which refers to fine coordinated control of the hands and fingers which also comes from the neck area at this C6-C7 segment.

So her physical exam in that sense was different preaccident versus postaccident.

The other thing was the operative findings themselves, which did demonstrate some normal degenerative changes that you would see in a patient that had a prior fusion surgery, but additionally, there was essentially the annulus or the outer ring of disc at C6-C7 was blown out and there was a significant amount of disc material herniated into the canal, putting pressure on the cord, so that speaks to a traumatic incident, rather than a slow gradual degenerative process.

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

So if you put all these things together, that's why I can come up with to within a reasonable degree of medical certainty based upon what's happening to the patient, what I was actually able to look at and see and feel and touch. I believe that the car accident caused that condition.

Q So, Doctor, the X-ray that you looked at in 2016, that Ms. Ludlam mentioned where there's degenerative processes going on. Can you explain that to them, what the difference was that you saw in that X-ray before the June 2017 accident and what you saw when you actually operated on her?

A Well, they are completely and entirely different things. The X-ray just shows the normal alignment and contour of the spine as it would be in a patient who had a prior fusion with some normal degenerative changes, particularly given Mrs. Cooper's age, the operative findings, a rupture of the annulus, which is something you can't see on the X-ray, but you can see it intraoperatively, and if you combine that with her physical findings, you can come up with a medical conclusion as to causation of her medical condition.

Q You mentioned the word intraoperatively, can you tell them what that means?

A At surgery.

MR. ROSENBERG: I'm done.

MS. LUDLAM: Judge, recross?

THE COURT: Go ahead.

RECROSS-EXAMINATION BY

MS. LUDLAM:

Q Doctor, you just mentioned that following the accident of 2011 and right before the accident of 2017, that Mrs. Cooper was stable; is that the words you used?

A Yes.

Q But according to your records of April 8, 2016, her symptoms were becoming progressive over time, correct?

A She had an increase in her symptoms, yes.

Q So that's not stable, correct?

A The term stable when you're thinking about it from a surgical perspective or neurological perspective is whether there are neurological deficits. Pain can be subjective, and particularly actively related pain in patients that had neck and back reconstructions is typical.

So that can be a condition that requires further treatment like Dr. Davy, a pain management or physiatry, but the stability of the surgery refers to her neurological condition, meaning that at that point in time no further surgery was recommended upon that visit.

Q But it's that telephone call that we found in your reports that were in the subpoenaed records from June 25, 2016, that you were counseling her about the possibility of a future revision surgery, correct?

 © 2025 Thomson Reuters. No claim to original U.S. Government Works.

A Sure, yes.

MS. LUDLAM: Thank you. Nothing further, Judge.

THE COURT: Is that it?

MR. ROSENBERG: Just one question. Just so we're not confused, when you say you were counseling, what Ms. Ludlam just said, for future, is that something that you do with all your patients that have surgical intervention?

THE WITNESS: Sure.

MR. ROSENBERG: I have no other questions.

THE COURT: I believe we're done. Doctor, thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: Thank you very much. Be careful as you step down.

(Witness exits.)

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.